

## REMARKS

Claims 1-2 and 6-43, as amended, and new claims 44-45 appear in this application for the Examiner's review and consideration. Claims 3 and 4 have been cancelled herein. The new claims are based on claim 3 but depend upon claims 7 and 9, respectively. Currently, claims 1-2, 6-9, 11-17, 23-28, 32, 38-41 and 43 are under active consideration while claims 10, 18-22, 29-31, 33-37 and 42 are currently withdrawn. It is believed that the latter claims will be rejoined when the other claims are allowed because they are dependent upon them.

The allowance of claims 6 and 28 is appreciated. As the subject matter of claim 13 has been indicated as being allowable, claim 12 has been amended to incorporate the features of claim 13 while claim 13 has been cancelled. Thus, claim 12 is now allowable. As claims 14, 15 and 43 depend from claim 12, these claims are also believed to be in condition for allowance.

Claim 1 has been amended to incorporate therein the recitations of claim 3, which is now cancelled, and to further recite that the first and second support members are held in a fixed position. Similarly, claims 16, 23, and 32 have also been amended this way. Support for the added feature is present in the specification and drawings, such as Figures 3 and 7 of the drawings, which illustrate that these members can be connected in only one fixed position.

Claim 7 has been amended to further define the invention in that the back surface is stated as having substantially flat portions surrounding a central area that forms a concave indentation that is curved to generally follow the curve of the user's waist. Support for this language can be found in the specification and in Figure 1 of the drawings.

Claim 9 has been amended to recite that the first and second support members are made of an injection molded plastic material, support for which is provided by numerous paragraphs in the specification. As no new matter has been introduced by any of the claim amendments and additions, these amendments should be added at this time.

Claims 16-17 were rejected as being anticipated by US patent 6,443,342 to Kahn. As claim 16 was amended to recite the features of claim 3, a claim that was not rejected over Kahn, this rejection has been overcome.

Claims 1, 2, 32, 39 and 40 were rejected as being anticipated by US patent 6,264,079 to Skaggs. As claim 3 was not rejected over this patent, the incorporation of claim 3 into claims 1 and 32 thus overcomes this rejection.

Claims 1, 2, 11, 12, 14, 15, 38-41 and 43 were rejected as being anticipated by US patent 6,062,449 to Kahn. As noted above, claim 12 was amended to incorporate the features of claim 13. Also, claim 1 was amended to incorporate the features of claim 3. As claims 3 and 13 were not rejected over the Skaggs patent, the amendments overcome this rejection.

Claims 1, 2, 9, 32, 38, 39, 41 and 43 were rejected as being anticipated by Musarella et al. US patent 5,944,242. This patent relates to a tool holder that includes support members made of a wire of single piece construction. Claim 9 has been amended to recite that the support members are each made of a plastic material. As Musarella et al. does not disclose plastic as suitable material, and since plastic materials cannot be configured in the same way as metal due to their different properties, this rejection should be withdrawn as to claim 9. Furthermore, since claim 3 was not rejected over this patent, the incorporation of claim 3 into claims 1 and 32 thus overcomes this rejection as to those claims as well.

Claims 1-3, 11, 23-27, 32 and 43 were rejected as being anticipated by US patent 6,457,616 to Gagne. This patent discloses a belt clip-mounted holder assembly allows for the hands-free carrying of a beverage container. The body portion of the holder assembly comprises a plate having a spring-loaded clip used to attach the holder assembly to a person's belt or waistband. A pivotally mounted bracket located near the base of the plate allows a receptacle to move in a pendular manner. The receptacle is insulated and is designed to support a beverage container therein.

The spring loaded clip of Gagne is intended to allow movement between the front and back portions of the clip. Applicant has found that this type of connection is not desirable, since bumping or other forces applied to the tabs 115, 115' can cause movement of the front and back portions and a loss of stability of the holder. Furthermore, tabs 115, 115' can become caught on items as the wearer moves around, again causing movement and loss of stability. In any event, Gagne's construction is not one in which the front and back portions are maintained in a fixed position, as they are capable of pivoting movement. Thus, the language added to independent claims 1, 23 and 32 distinguishes applicants' invention from Gagne, and this rejection should be withdrawn.

Claims 7-8 were rejected as being obvious over any one of the Kahn '449, Skaggs or Gagne patents in view of either US patents 1,625,920 to Thurman or 6,508,390 to Karpati.

It is respectfully submitted that the secondary references to Thurman or Karpati do not remedy the deficiencies of the primary references to result in the presently claimed invention. Thurman and Karpati are cited as teachings of how to configure the back of the support member to conform to the wearer's waist, a feature which is missing from the Kahn, Skaggs and Gagne patents.

Thurman discloses a box designed for carrying tackle, wherein the box is configured with curved walls. While no purpose of stated for the curved walls, it appears that it is intended for conformance to the wearer's belt and body. However, the Thurman device is not an open tool holder as claimed so that there would be no motivation for the skilled artisan to combine this patent with the other cited references.

Karpati discloses a belt-mounted holder for spackle items. More particularly, the invention is an item that is removably attachable to a belt of a user, and functions to hold a hawk or spackle device so that the user does not have to put the item down while working. Again, the skilled artisan would not look to this patent for guidance on how to hold tools, since it is of a much different size and shape than the present invention.

Even if these secondary references are combined with the primary references, the skilled artisan does not obtain the present invention, which recites in claim 7 that the back surface has substantially flat portions surrounding a central area that forms a concave indentation that is curved to generally follow the curve of the user's waist. This is easily achievable with applicants' molded article but is not as easy to do with the wood box of Thurman or the metal structure of Karpati. Accordingly, these rejections have been overcome and should be withdrawn.

Thus, the entire application is now believed to be in condition for allowance, early notice of which would be appreciated.

Respectfully submitted,

11/21/05  
Date

  
\_\_\_\_\_  
Allan A. Fanucci (Reg. No. 30,256)

WINSTON & STRAWN LLP  
Customer No. 28765  
212-294-3311